

## **Title 13 – Real Property and Housing**

### **Chapter 05 – Leasing of Tribal Lands**

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### **Legislative History**

#### **Enacted:**

Ordinance 311 Enacting Regulations Regarding the Leasing of Tribal Lands  
(05/01/12), BIA (5/15/12).

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#### **13-05.010 Title.**

This Chapter shall be referred to as the “Swinomish Tribal Lands Leasing Code.”

[History] Ord. 311 (05/01/12).

#### **13-05.020 Purpose.**

- (A) The leasing of land held in restricted or trust status for, or owned in fee simple by, the Swinomish Indian Tribal Community constitutes a consensual relationship with the Swinomish Indian Tribal Community. Activities conducted on such land can threaten or have a direct effect on the economic security, health, safety or welfare of the Swinomish Indian Tribal Community and its members.

- (B) The Swinomish Indian Tribal Community has inherent authority to govern activity on Tribal lands.
- (C) The Senate has the authority to exclude from the lands of the Swinomish Indian Reservation persons not legally entitled to reside on those lands, which includes the lesser power to place conditions on entry, on continued presence, or on conduct on such land, and to regulate conduct that threatens or affects the political integrity, economic security, and health and welfare of the Swinomish Indian Tribal Community as a unique people and a sovereign government.
- (C) Title 25 U.S.C. §415(b) provides that any lease by the Swinomish Indian Tribal Community under 25 U.S.C. §415(a), except a lease for the exploitation of any natural resource, shall not require the approval of the Secretary of the Interior if:
  - (1) the term of the lease does not exceed fifteen years, with no option to renew, or
  - (2) the term does not exceed seventy-five years (including options to renew), and the lease is executed pursuant to tribal regulations approved by the Secretary.
- (D) The purpose of this Chapter is to regulate the leasing of Tribal lands in accordance with Swinomish law, the Swinomish Constitution and 25 U.S.C. §415 in order to protect and promote the economic security, health, safety and welfare of the Swinomish Indian Tribal Community and its members.

[History] Ord. 311 (05/01/12).

**13-05.030 Authority.**

- (A) This Chapter is enacted pursuant to authority provided by Article VI, Sections 1(a), (c), (i), (k), and (l) of the Swinomish Constitution, and pursuant to the inherent authority of the Swinomish Indian Tribal Community, recognized in 25 U.S.C. §415(b).
- (B) This Chapter is enacted to effectuate Article VIII, Section 3 of the Swinomish Constitution.

[History] Ord. 311 (05/01/12).

**13-05.040 Definitions.**

For purposes of this Chapter, unless otherwise expressly provided, the following definitions shall apply:

- (A) **“Reservation”** means all lands and waters within the exterior boundaries of the

Swinomish Indian Reservation.

- (B) **“Secretary”** means the Secretary of the United States Department of the Interior, or any successor agency.
- (C) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
- (D) **“Tribe”** or **“Tribal”** means or refers to the Swinomish Indian Tribal Community, a Federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, which is composed of members tracing their ancestry to the aboriginal Swinomish, Samish, Kikiallus, and Lower Skagit bands of Indians.
- (E) **“Tribal land”** means:
  - (1) a parcel of restricted Indian land or of land held in trust by the United States, all of which is owned by or held in trust for the Swinomish Indian Tribal Community; or
  - (2) a parcel of land that has been fractionated into two or more ownership interests consisting only of:
    - (a) a fractionated interest held in trust by the United States for the Swinomish Indian Tribal Community, and
    - (b) a fractionated interest or interests not held in trust by the United States for any party but owned in fee simple by the Swinomish Indian Tribal Community or by another party or parties.

[History] Ord. 311 (05/01/12).

#### **13-05.050 Applicability.**

This Chapter applies to any initial lease, or amendment of a lease, of Tribal land for public, religious, educational, recreational, residential, or commercial purposes, except a lease for the exploitation of natural resources, if the term of the lease or amended lease does not exceed seventy-five years (including options to renew).

[History] Ord. 311 (05/01/12).

### ***Subchapter I – Approval of Tribal Land Leases***

#### **13-05.060 Mandatory Lease Provisions.**

All leases issued under and pursuant to this Chapter shall contain the following provisions in substantially the following form:

- (A) While the leased premises are in trust or restricted status, all of the lessee's obligations under this lease, and the obligations of his sureties, are to the United States as well as to the Tribe.
- (B) Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The lessee and its lease surety or sureties shall be notified of any such change in the status of the land.
- (C) The lessee agrees that lessee will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose, creation of a nuisance, illegal activity, negligent use or waste of the leased premises.
- (D) The lessee must comply with all Tribal law, rules, regulations and orders, and with all applicable Federal, State and local law.
- (E) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease immediately and totally and the lessee will immediately contact the Tribe to determine how to proceed and the appropriate disposition of resources, remains, or other items encountered.
- (F) This lease shall in no manner diminish, affect, waive or limit any aspect of the Tribe's jurisdiction, dominion, authority, sovereignty or control, whether civil, criminal, regulatory, adjudicatory, licensing, taxation or otherwise, over the leased premises, or over anyone or anything thereon or therein, or any activities taking place on, over or under the leased premises, without regard to whether the person or entity being regulated is a Tribal member, other Native American or non-Indian person or entity, or State or local governmental authority. This provision is an essential and indivisible part of this lease; should this provision, at the request of lessee or its employees, agents, or contractors (including subcontractors), or any person or entity acting in concert with lessee, be struck down, ruled unenforceable, or ineffective, or in any manner limited, this lease shall be void and the rights granted by this lease shall terminate immediately.

[History] Ord. 311 (05/01/12).

#### **13-05.070 Prohibited Lease Provisions.**

- (A) No lease shall provide the lessee a preference right to future leases nor shall any lease

contain provisions for renewal that would, if exercised, result in a total lease term of more than seventy-five years.

- (B) No lease shall be entered into more than 12 months prior to the commencement of the term of the lease.

[History] Ord. 311 (05/01/12).

### **13-05.080 Procedure for Tribal Approval of Lease.**

- (A) Any proposed lease shall be presented to and considered by the Senate for approval.
- (B) The Senate may, in its discretion, approve and authorize the execution and delivery of any proposed lease that complies with this Chapter and other Swinomish law. The Senate shall disapprove any proposed lease that does not comply with this Chapter or other Swinomish law.
- (C) If a lease is approved by the Senate pursuant to this Chapter, the Senate shall certify in writing that the Senate has found and determined that the lease is authorized by and complies with Swinomish law.
- (D) Upon certification by the Senate pursuant to Subsection (C) of this Section, the lease and Senate certification shall be submitted to the Secretary for acknowledgment that the approval and execution of the lease is within the Tribe's lawful authority. The Secretary is expected to defer to and accept the Senate's certified finding and determination made pursuant to Subsection (C) of this Section. If the Secretary does not act upon the Senate's certified finding and determination within ten (10) business days of the Secretary's receipt of the lease and Senate certification, the Secretary shall be deemed to have accepted the Senate's certified finding and determination.

[History] Ord. 311 (05/01/12).

### **13-05.090 Recording of Documents Relating to Leases of Tribal Lands**

Any lease or amendment entered into pursuant to this Chapter, and any assignment, sublease, or mortgage relating to a lease entered into pursuant to this Chapter, must be recorded in the Secretary's Land Titles and Records Office.

[History] Ord. 311 (05/01/12).

## ***Subchapter II – Severability and Effective Date***

### **13-05.100 Severability.**

The invalidity of any section, clause, sentence or provision of this Chapter shall not affect the

validity of any part of this Chapter that can be given effect without such invalid part or parts.

[History] Ord. 311 (05/01/12).

**13-05.110 Effective Date.**

This Chapter shall become effective immediately upon approval by the Secretary of the Interior or the Secretary's designated representative.

[History] Ord. 311 (05/01/12).